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APPLICATION NO.	FILIN	G DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	ATTORNEY DOCKET NO. CONFIRMATION NO.	
09/850,202	05/0	7/2001	Peter Phaal	21906-0703	21906-0703 9730	
7	590	03/29/2005		EXAMINER		
David Beck			LIEN, TAN			
Bingham McC		P	ART UNIT	PAPER NUMBER		
3 Embarcadero	Center			ACTORIT	FAFER NUMBER	
Suite 1800				2141		
San Francisco,	CA 9411	11		DATE MAILED: 03/29/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

NOTICE OF APPEAL 2. The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s): 6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) withdrawn from consideration:		Application No.	Applicant(s)						
Tan Lien Tan L	•	09/850,202	PHAAL, PETER						
The MAILING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 18 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. 1. ☑ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) ☐ The period for reply expires months from the mailing date of the final rejection. b) ☑ The period for reply expires are months from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examine Note: If box 1 is checked, check either box (a) or (b) CIV CHECK BOX (b) WHEN THE FIRST RRPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL RELECTION See MPEP 708.07(f). Extensions of time may be obtained under 37 CFR 1.136(a) and the appropriate extension fee under 37 CFR 1.173(a) the date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.173(b) and calculated from: (1) the expiration date of the shorteend statutory period for reply display set in the final Office action, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any search plant extension for the mail statutory period for reply deptition and set of the shorteend statutory period for reply depti	Before the Filing of an Appeal Brief	Examiner	Art Unit						
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AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary	THE REPLY FILED 18 February 2005 FAILS TO PLACE THIS 1. ☑ The reply was filed after a final rejection, but prior to filing application in condition for allowance; (2) a Notice of App Request for Continued Examination (RCE) in compliance time periods: a) ☐ The period for reply expires months from the mailing of the period for reply expires on: (1) the mailing date of this Adv event, however, will the statutory period for reply expire later the Examiner Note: If box 1 is checked, check either box (a) or (b). MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f). Extensions of time may be obtained under 37 CFR 1.135(a). The date on been filed is the date for purposes of determining the period of extension a CFR 1.17(a) is calculated from: (1) the expiration date of the shortened stabove, if checked. Any reply received by the Office later than three monthearned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 2. ☐ The reply was filed after the date of filling a Notice of App was filed on A brief in compliance with 37 CFR 4 Appeal (37 CFR 41.37(a)), or any extension thereof (37 C Appeal has been filed, any reply must be filed within the AMENDMENTS 3. ☐ The proposed amendment(s) filed after a final rejection, (a) ☐ They raise new issues that would require further co (b) ☐ They raise new issues that would require further co (c) ☐ They are not deemed to place the application in being appeal; and/or (d) ☐ They present additional claims without canceling a NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.15 ☐ Applicant's reply has overcome the following rejection(s). ☐ Newly proposed or amended claim(s) would be rejected in promise of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected in promise and was not earlier presented. See 37 CFR 1.116(e). Claim(s) rejected: 1-19 and 26-32. Claim(s) withdrawn from consideration:	Tan Lien ars on the cover sheet with the cases on the cover sheet with appeal fee) in compliance with 37 CFR 1.114. The reply must be filled with a set of the final rejection. Isory Action, or (2) the date set forth in the an SIX MONTHS from the mailing date of ONLY CHECK BOX (b) WHEN THE FILE. Which the petition under 37 CFR 1.136(and the corresponding amount of the fee. atterty period for reply originally set in the staffer the mailing date of the final rejection of the filling are a safter the mailing date of the final rejection of the date of filling as the safter the mailing date of the final rejection of the date of filling a brie period set forth in 37 CFR 41. But prior to the date of filling a brie period set forth in 37 CFR 41. But prior to the date of filling a brie period set forth in 37 CFR 41. But prior to the date of filling a brie period set form for appeal by materially recorresponding number of finally recorresponding num	correspondence addition of this applies and an appeal brief. The North appropriate extension final Office action; or (2) on, even if timely filed, main appeal brief. The North appropriate extension final Office action; or (2) on, even if timely filed, main appeal brief. The North appeal. Since a 37(a). If, will not be entered to the appeal or simplifying educing o	ication, es the or (3) a of the following of the following or is later. In no DWITHIN TWO ension fee have in fee under 37 as set forth in (b) yreduce any of the Notice of Notice of Notice of Notice of explanation of explanation of explanation of will not be entered is necessary will not be eits of the d. Ince because:					
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DETAILED ACTION

Response to Amendment

Applicant's arguments filed 2/18/2005 have been fully reconsidered but they are not persuasive.

In the Remarks, Applicant argued that

(a) Applicant's belief that the claimed invention is not obvious over the combination of Bruins (US Patent 6,308,148) and Merriam (US Patent 6,587,878).

As to point (a), the Examiner is not just stating that the suggestion or motivation to combine is to improve the efficiently of the network, but the Examiner also pointed out that the suggestion or motivation to combine Bruins' method of extracting packet information from the filtered flow records with Marriam's performance measurement program to measure actual performance data extracted from the filter is in the Abstract of Bruins (next to last sentence & Claim 5 of Bruins). After reading the citation, one of ordinary skill in the art at the time of the invention would recognized that when adjusting the network performance parameters of the network, one would try to improve its efficiency in terms of performance, and not try to degrade its performance nor adjusting the performance parameters just for the sake of adjusting. The Examiner is not just

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merely stating the <u>obvious</u> suggestion or motivation to combine, but also pointed out in the prior art which emphatically and clearly states it.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Tan Lien whose telephone number is (703) 305-6018. The examiner can normally be reached on Monday-Thursday from 8:30am to 6pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for this Group is (703) 305-3718.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [tan.lien@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy

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published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

MUPAL DHARIA SUPERVISORY PATENT EXAMINER